

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

JOSEPH B. HOLMBERG and	:	Case No. 15-10206-TPA
TARA N. HOLMBERG,	:	
<i>Debtors</i>	:	Chapter 13
JOSEPH B. HOLMBERG and	:	Related to Doc. Nos. 79, 90,
TARA N. HOLMBERG,	:	96, 102
<i>Movants</i>	:	
v.	:	Hrg.: June 20, 2019 at 10:00 A.M.
PNC BANK, N.A. and RONDA J.	:	
WINNECOUR, CH. 13 TRUSTEE,	:	
<i>Respondents</i>	:	

ORDER

On May 7, 2019 the Court entered an Order to Show Cause (“OTSC”) directing three individuals from PNC Bank, N.A. (“PNC”) to appear at a hearing on June 12, 2019 to answer some questions the Court has concerning a Notice of Mortgage Payment Change (“Notice”) filed by PNC. Those individuals are Anthony Mullins (“Mullins”), Judy Borkey (“Borkey”), and the Supervisor of the PNC Bankruptcy Department for the geographical area encompassed by the Western District of Pennsylvania. PNC subsequently identified that person as Scott Schuster (“Schuster”)

On May 31, 2019 PNC filed a *Motion to Excuse Attendance of Anthony Mullins and Judy Borkey and Substitute Attendance of Scott E. Schuster at Hearing Regarding Order to Show Cuse* (“Motion to Excuse”), Doc. No. 96. The *Motion to Excuse* purports to lay out the

history underlying the *Notice* and answering the questions posed by the Court in the OTSC. PNC admits making a mistake with respect to the *Notice*, apologizes for the confusion caused thereby, and states that Schuster will be able to provide a complete explanation at the hearing and asserts that the presence of Mullins and Borkey at the hearing will not be necessary because they will not be able to add anything else.

On June 7, 2019 , before the Court even issued any kind of Order regarding the *Motion to Excuse*, PNC then filed an *Emergency Motion to Excuse Attendance of Judy Borkey at Hearing Regarding Order to Show Cause* (“Emergency Motion”), Doc. No. 102. As indicated by its title, the *Emergency Motion* is another attempt to excuse the appearance of Borkey from the OTSC hearing, this time for the alleged reason that she will be “out of the state” on the date of the hearing, and therefore unable to appear.

There are a number of troubling issues surrounding the *Emergency Motion*. To begin with, PNC failed to comply with this Court’s procedures, which require that when any motion seeking emergency relief is filed the moving party is to telephonically or electronically notify the appropriate Courtroom Deputy, which PNC did not do here. *See, Judge Agresti General Procedure (A)(3)*. Next, the *Emergency Motion* alleges that PNC just became aware “this morning” that Borkey is going to be out of state on June 12th and thus unable to appear at the hearing. *Emergency Motion at ¶4*. This is frankly very surprising and disappointing to the Court. The OTSC was issued on May 7, 2019, but apparently no one at PNC took it seriously enough to check on Borkey’s schedule until a full month later, only a few days before the scheduled hearing. The Court further notes that Borkey herself was sent a copy of the OTSC, so if she was aware of a scheduling conflict

she should have promptly advised PNC's counsel about it even if counsel did not check with her.

Finally, the *Emergency Motion* provides no detail at all concerning Borkey's reason for being out of the state the date of the hearing. For instance, what is the purpose of such trip? when was it scheduled?, and were any efforts made to reschedule that trip rather than to try to avoid attending the OTSC hearing?

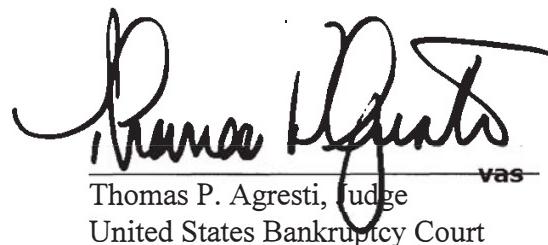
For all of the reasons noted above the Court could summarily deny the *Emergency Motion*. It has decided not to do so, but instead to grant it in part by continuing the hearing date from June 12th. However, no further continuances will be granted except for an extraordinary circumstance, and both Borkey and Mullins will be required to be present at the continued hearing.

AND NOW, this *10th* day of *June, 2019*, it is **ORDERED, ADJUDGED** and **DECREED** that,

(1) The *Motion to Excuse* filed at Document No. 96 is **DENIED**.

(2) The *Emergency Motion* filed at Document No. 102 is **GRANTED in part** in that the OTSC hearing previously scheduled for June 12, 2019 at 10:00 A.M. is **CANCELLED** and **CONTINUED** to *June 20, 2019 at 10:00 A.M.* in the Erie Bankruptcy Courtroom, U.S. Courthouse, 17 S. Park Row, Erie, Pa. 16501, at which time Mullins, Borkey and Schuster shall each **personally appear**.

(3) The hearing on the *Objection* to the *Notice* which was filed by the Debtors at Doc. No. 79 and previously scheduled for June 12, 2019 at 10:00 A.M. is **CANCELLED** and **Continued to June 20, 2019 at 10:00 A.M.** in the Erie Bankruptcy Courtroom, U.S. Courthouse, 17 S. Park Row, Erie, Pa. 16501.



Thomas P. Agresti, Judge
United States Bankruptcy Court

Case administrator to serve:

Daniel Foster, Esq.
Nicholas Godfrey, Esq.
John J. Berry, Esq.
Ronda Wynecour, Esq.
Debtors

In re:
Joseph B. Holmberg
Tara N. Holmberg
Debtors

Case No. 15-10206-TPA
Chapter 13

CERTIFICATE OF NOTICE

District/off: 0315-1

User: lfin
Form ID: pdf900

Page 1 of 1
Total Noticed: 1

Date Rcvd: Jun 10, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jun 12, 2019.

db/jdb +Joseph B. Holmberg, Tara N. Holmberg, 2272 Jackson Run Road, Warren, PA 16365-7102

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jun 12, 2019

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on June 10, 2019 at the address(es) listed below:

Andrew F Gornall on behalf of Creditor M&T BANK andygornall@latouflawfirm.com
Daniel P. Foster on behalf of Debtor Joseph B. Holmberg dan@mrdebtbuster.com,
clarissa@mrdebtbuster.com;fosterlaw@ecf.inforuptcy.com;anne@ecf.inforuptcy.com
Daniel P. Foster on behalf of Joint Debtor Tara N. Holmberg dan@mrdebtbuster.com,
clarissa@mrdebtbuster.com;fosterlaw@ecf.inforuptcy.com;anne@ecf.inforuptcy.com
James Warmbrodt on behalf of Creditor M&T BANK bkgroup@kmlawgroup.com
John J. Berry on behalf of Creditor PNC BANK N.A. John.Berry@dinsmore.com,
Christina.Lee@dinsmore.com
Nicholas Godfrey on behalf of Creditor PNC BANK N.A. nicholas.godfrey@dinsmore.com,
christina.lee@dinsmore.com
Office of the United States Trustee ustpregion03.pi.ecf@usdoj.gov
Peter J. Ashcroft on behalf of Creditor Green Tree Servicing, LLC pashcroft@bernsteinlaw.com,
ckutch@ecf.courtdrive.com;acarr@bernsteinlaw.com
Ronda J. Winnecour cmevf@chapter13trusteewdpacom

TOTAL: 9